Supreme Court, U.S.
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IN THE ONE SUPREME COURT

FOR THE UNITED STATES OF AMERICA.

OCTOBER TERM, 1992

No. 92-681

EDWARD G. NOVOTNY

Citizen/Petitioner

vs

UNITED STATES, et al.

Respondents.

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PETITIONERS RESPONSE TO BRIEF OF THE UNITED STATES

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EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

QUESTIONS PRESENTED FOR REVIEW

1. Did the inferior Administrative Tribunal error by assuming jurisdiction over the Petitioner and subject matter.

2. Did the Administrative Tribunal error by denying Petitioner the Constitutionally secured Right of a Citizen to "trial by Jury" in ALL Criminal Cases as secured under the Constitution for the United States of America, Article III, Sec. 1, and 2, Clauses 1 and 3, and Articles of Amendment VI.

3. Did the inferior Tribunal error by allowing the Executive Branch to exceed their authority and limitations granted by Acts of Congress.

4. Did the inferior Administrative Tribunal error by imposing an excessive and unusual sentence/fine upon the Citizen Petitioner in contravention of Congress and Articles of Amendemt VIII.

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PETITIONERS RESPONSE TO BRIEF OF

THE UNITED STATES

OBJECTION

Petitioner objects to the Respondent changing the wording and meaning of the questions presented. Petitioner believes that they are clear enough. Petitioner's Appeal was docketed on Oct. 5, 1992. The 10th Circuit Court denied Petitioner's reconsideration on July 1, 1992.

Petitioners Appeal was timely mailed, but because of delay in the mail, it was not docketed until Oct. 5, 1992

STATUS OF PETITIONER

The petitioner has continually claimed to be a free, natural born Citizen, or a Colorado State Republic Citizen, subject only to the Common Law in this instance, which has not been disputed. He has never intentionally admitted to being a "person", or "individual", nor a "citizen of the United States", nor being in some "corporate" capacity, nor a "14th Amendment citizen", or subject to government regulations, as he does not receive any benefit therefrom. His claimed status has never been objected to.

JURISDICTION

Jurisdiction of this Court is invoked because of 36 C.F.R. 261.6, and under Title 28 U.S.C. Sec. 1254(1), and under

Art. 3, Sec. 2, Cl. 2 of the United States Constitution.

RESPONSE

Following a bench trial over the Petitioners objection, (trans pa 9) the Petitioner was found guilty of removing timber products (firewood) from the national forest without a permit. He was sentenced to three months in prison, and fined $2,500.00. The Court of Appeals did affirm.

Petitioner has never denied that he cut and removed the "firewood" from somewhere within the public forest area, but claimed that he did not need a permit because he was one of the free people to whom the public forest belonged, nor was he subject to the C.F.R.. The Respondent is in error, as the Petitioner has never knowingly claimed or admitted to be a "United States citizen". Petitioner has continually claimed to be a free sovereign

Citizen, or a Colorado State Citizen under the Common Law, which has never been disputed.

Officer Morse did "swear" that the Petitioner was "not a timber sales contractor, your a personal use firewood gatherer, and those are two separate entities", (trans pa 77) and claimed he needed a permit before removing firewood, but could not cite or present any evidence of that law/regulation, before issuing the citation, (presentence report) nor did she present the law requiring it at the hearing.

How could the Petitioner illegally gather, cut and remove "firewood" as claimed by the forest service agent, the Respondents, the 10th Circuit Court, and the Tribunal, when Congress, 16 U.S.C. 477 and 36 CFR 223.5 allows "free" use of "firewood", and 36 CFR 219.3 plainly exempts "firewood" from being a regulated

"timber product", and holdings of this Court allow him to cut and remove "firewood" for personal use. Then where is the "crime" that the Petitioner committed that warranted being put in prison for? Or do we have a conflict of Law that must be decided by this Court? Or was Petitioner put in prison for challenging a foreign system of regulation that he is unaware of, and does not belong to?

The Petitioner was informed that the fine was close to $100.00, (Trans pa 25) with no other jeopardy mentioned to him by the Tribunal.

The Court of Appeals rejected the Petitioners claim that he was a "free Citizen" and that the federal district court lacked personal and subject matter jurisdiction.

The Court of Appeals held that the district court had subject matter jurisdiction under 16 U.S.C. 551. But

which relies on the 55th Act of Congress that reserves free use for the people. Where does a "Citizen" become subject to foreign jurisdiction, foreign rules and regulations, without consent, contract or knowledge, unless done by deceit or fraud?

The Petitioner did not personally testify, because the federal district tribunal did not declare their true character, state their authority over the Petitioner, nor state the true nature and cause of the accusation. Therefor, the petitioner who was under no contract, took the Common Law approach of being innocent until proven guilty, and the record will reflect that he formed his questions of the government's witnesses to prove that there was no crime, no commerce, no business, no contract, no violation of known established regulation or law, nor was it shown that the Petitioner was one subject to any C.F.R..

The United States convicted the petitioner for doing what he was doing, without any evidence of any illegal activity, or law violation. Subject matter jurisdiction can only be achieved by a contract which the government is a party to.

The Respondent states that "there was no indication that the judge was compliant, biased, or eccentric." By "ORDER", of Aug. 7, 1991, the Tribunal said, "Because of what I thought were aggravating circumstances in this case, defendant was sentenced to serve a three-month term in prison". Further it said, that the reasons were stated in open court. The only reasons known to the Petitioner were that he cut and removed "firewood", and challenged their authority. Petitioner was not informed that defending or doing what the law and statute allows could be "aggravating" and

therefore, jailable.

The Petitioner contends that for the stated reasons in this entire Appeal, that the judge was corrupt or overzealous' in his actions, and was therefore in violation of Amendment VIII, excessive fine and was cruel and unusual punishment.

Therefore Petitioner disagrees with the Respondent that the court of appeals correctly ruled that Petitioner was not entitled to jury trial.

The Constitution is a superior document. Marbuary vs. Madison, 5 U.S. 137, 177 (1803)

Art. III, Sec 2, Cl. 3 & 4, and Amendments VI, VII, IX, & X, secures Petitioners right to trial by jury in "ALL" criminal cases. No other logical conclusion could be arrived at or can be aduced from the clear language of the Constitution. 16 USC 551 is patently unconstitutional and void as it purtains

to the Petitioner.

Further trial by jury is mandatory, not discretionary in a criminal case, as cited in Duncan vs. State of Louisiana, 391 U.S. 145, at 155 that:

> "A right to jury trial is granted to criminal defendants in order to prevent oppressions by the Government". Citing Singer vs. United States, 380 U.S. 24, 31, 13 L Ed 2d 630, 635, 85 S Ct. 783, (1965)

And this Court held that, "Where rights secured by the Constitution are involved, there can by no rule making or legislation which would abrogate them." Miranda vs. Arizona, 384 U.S. 436, 491. (1966)

The Respondent is being misleading when it cites United States v. Nachtigal, 953 F.2d 1389 (1992), petition for cert. pending, No. 92-609. Machtigal was convicted for driving under the influence of alcohol, or DUI. DUI, is a crime, and is under a drivers license, or "privilege" granted by Government, which sets limits

and restructions. Further, it is an "agreement" or "privilege" which a government agency is a party, therefore there is a "public interest".

Further, Respondent cites United States v. Crews, 455 US 463, 63 L Ed 2d 537, 100 S Ct 1244, (1980) where there was a common law crime of robbery, with an injured party.

How can the Respondent compare a "privilege" or "contract" or license violation of a state, or a violent crime of robbery, with one exercising a Inalienable RIGHT secured by the Constitution(s), and authorized by Congress and established Law.

The only contract violation here is the violation of the oath of the government's agents/employees, who swore to support the Constitution, but failed to adhere to the specific terms and conditions.

It is well established that the people did not give Congress or its agencies the authority to regulate the very people who wrote the contract. "History is clear that the first ten amendments to the constitution were adopted to secure certain common law rights of the people, against invasion by the Federal Government." Bell vs. Hood, 71 F.Supp., 813, 816, (1947) U.S.D.C..

Agents Morse and Nowlin both admitted that they had sworn an oath to support the Constitution of the United States, the very Constitution that the Petitioner has relied on from the very begining.

The federal district tribunal, the 10th Circuit Court of Appeals, the Attorneys, and the agents/employees are at best, in error.

The petitioner was found guilty of being in violation of 36 C.F.R. 261.6(h), a federal regulation. The Appellees cite

16 U.S.C. 551 for the criminal act and for assuming jurisdiction and authority.

Congress did not exceed its authority; its agents, employees and Respondents exceeded their authority. Morse and Nowlin admitted that they took an oath to support the Constitution and the Laws made in pursuance thereof. The Respondent agents knew or should have known that the intent of Congress was to regulate business and occupation of the forest and its forest products, which was for profit and therefore a public interest. This was done through "timber Sales Contracts" and by "permits", which all pertained to business and occupations.

It has been stated that "Every Act of a Legislature shall embrace but one subject, which be clearly expressed in its title, * * *". Bond vs. Phelps, 191 P2d 938, at 946 (1948)

> It was stated that, Our system of law is built upon precedents, and if every past decision can be reopened in every

> case and one cannot lay one's own course of bricks on the secure foundation of the courses laid by others who had gone before him the labor of lawyers and judges would be increased almost to the braking point. I.D. at 945.

The Appellees stated that Congress has authorized the Secretary of Agriclture to promulgate rules and regulations for the protection of national forest from deprevations. (business) The Petitioner agrees, but Art. V. Sec. 21 of the Colorado Constitution is the same when it states that:

> "No bill, except general appropriation bills, shall be passed containing more than one subject, * * * ".

Further this is consistent, as it was stated in that:

> All of the details contained in the title of the Act * * * relate to the same subject, and to gather constitute but one general subject * * * . Upham v. Bramwell, 210 P 706, 707.

To go back to the record, agent Morse by "sworn testimony" stated that "you are not a timber sales contractor your a

personal use gatherer and those are two separate entities" (trans pa 77)

The Appellees contend that the Petitioner claims that he "* * * cannot steal what is his, nor steal something from the forest service which it does not own", is frivolous and does not merit the attention of this Court. The Petitioner disagrees for the following reasons:

First, where do the Respondents aquire the power and authority to charge, convict, sentence, fine and imprison any Citizen for using "public" forest products (firewood) for personal use, which they do not own, when Congress, the Law, and this Court recognizes his right to have and use?

Further, this public forest still belongs to people of the sovereign State of Colorado, (CRS 3-1-101, 102, 103) (1987) and it is being held in trust for the benefit of the people of this

sovereign state, of which the Petitioner is one of those people, and not for the Department of Agriculture.

Therefore the forest agents/employees charged and imprisioned the Petitioner for removing firewood from property that they did not own.

The Respondent states that "government agencies are not allowed to exceed the authority granted to them by Congress". If this Court accepts that theory and claim, that only supports the Petitioner's claim that he has the right to cut and remove the "firewood", which he has claimed from the beginning, as the Department of Agriclture regulates the forest against deprevations committed by "business, occupations, by Corporations", by permits and timber sales contracts.

Further it is public record that there is a lien on all public forest property on public record to further show that the

United States of America's counter claim is frivolous, and not the Petitioners.

Last, Petitioner did agree to appear at the Federal District Court to prepare for a Judicial trial by jury, but not a federal district Administrative commersioner hearing. When he found that he was to have a hearing, he objected to the proceedings, and did not voluntirely appear again. Petitioner contends that trickery and deceit were involved to get him there bordered on fraud, and both the Durango and Denver Triibunals were at fault.

Signed without prejudice, 1-207 U.C.C., Amendments I, IX and X, Art. 28, C.S.C.
Respectfully Submitted:

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